

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TEDDY BLACKBURN,
Plaintiff,

- against -

XENON PICTURES, INC.
Defendant.

COMPLAINT

Plaintiff Teddy Blackburn (“Blackburn” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Xenon Pictures, Inc., (“Xenon” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction, public display, and distribution of four copyrighted photographs of professional boxer Mike Tyson owned and registered by Teddy Blackburn, a New York based photojournalist. Accordingly, Blackburn seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b).

PARTIES

5. Blackburn is a professional photojournalist in the business of licensing his photographs to online, print, and television stations for a fee, having a usual place of business at 2985 Botanical Square, Apt. 6E, New York, New York 10458. Blackburn's photographs have appeared in many publications around the United States.

6. Upon information and belief, Xenon is a corporation duly organized and existing under the laws of the State of California, with a place of business at 3521 Jack Northrop Avenue, Hawthorne, California 90250.

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photographs

7. On June 28, 1997, Blackburn photographed Mike Tyson during the fight with Evander Holyfield (the "Photographs"). True and correct copies of the Photographs are attached hereto as Exhibit A.

8. Blackburn then licensed the Photographs to several magazines for publication.

9. Blackburn is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

10. The Photographs were registered with the United States Copyright Office and were given Copyright Registration Number VA 2-009-623.

B. Defendant's Infringing Activities

11. Upon information and belief, in 2004, Xenon released a documentary on Mike Tyson entitled *Mike vs Tyson The Battle Rages On*. The documentary prominently featured the Photographs. A copy of the Photographs in the documentary are attached hereto as Exhibit B.

12. Xenon did not license the Photographs from Plaintiff for its documentary, nor did Xenon have Plaintiff's permission or consent to publish the Photographs in the documentary.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST XENON)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. Xenon infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs in the documentary. Xenon is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photographs.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Xenon have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

18. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Xenon be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
October 6, 2016

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